

NOVA SCOTIA REGULATORY AND APPEALS BOARD

**IN THE MATTER OF THE LIQUOR CONTROL ACT
and the LIQUOR LICENSING REGULATIONS**

- and -

IN THE MATTER OF a penalty for violation of s. 64(1) of the *Nova Scotia Liquor Licensing Regulations*, and 47B(1) of the *Liquor Control Act* by **ROUTE 19 BREWING INC.**, located in Inverness, Nova Scotia

BEFORE: Julia E. Clark, LL.B., Vice Chair

PARTIES: **ALCOHOL, GAMING, FUEL & TOBACCO, a DIVISION of
the DEPARTMENT OF SERVICE NOVA SCOTIA**
Duane A. Eddy, Counsel

ROUTE 19 BREWING INC.
Bradley D.J. Proctor, Counsel
Nakita Samson

HEARING DATE(S): September 18-19, 2024

FINAL SUBMISSIONS: July 21, 2025

DECISION DATE: **October 23, 2025**

DECISION: Licenses suspended for 16 days, subject to the conditions set out in the decision.

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1.0 SUMMARY

[1] Route 19 Brewing Inc. (Route 19 or Licensee) operates a restaurant and lounge in Inverness, Cape Breton. In a decision dated May 20, 2025 [2025 NSRAB 27], the Nova Scotia Regulatory and Appeals Board concluded that Route 19 had violated s. 64(1) of the *Liquor Licensing Regulations* NS Reg 365/2007 (*Regulations*) by permitting activity “in or about the licensed premises detrimental to the orderly control and operation of the licensed premises”. The Board dismissed two other infractions that had been issued by an inspector of the Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia (AGFT).

[2] After the Board issued its decision on the infractions, the parties had an opportunity to review it and provide additional written submissions, addressing the actions the Board should take on Route 19’s license. The parties’ recommendations on the appropriate remedy were at completely opposite ends of the spectrum of penalties previously issued by the Board and its predecessor. Route 19 asked the Board to consider issuing a formal reprimand or a suspension of up to two days. AGFT asked the Board to consider the tragic death of Dallas Lewis on the evening of the infraction as an aggravating factor warranting a penalty of 50 days.

[3] The Board reflected at some length on an appropriate and fair penalty in this case. In this instance, the violation of s. 64(1) was proven. The Board’s decision cites multiple failures where the Licensee did not intervene to ensure the orderly control and operation of these licensed premises. The Board finds the obligation set out in s. 64(1) supports a core purpose of the regulatory scheme -- the control of sales and service of liquor in the Province with the objective of ensuring public safety. The Board considers the failure to meet this obligation to be a serious infraction. This Licensee has no prior

history of violations under the *Regulations*. Its actions did not meet the expectations of the *Regulations*, but the Board did not find the actions, or inaction, to be reckless or intentional.

[4] The Board considered the evidence and all submissions, the nature of this violation and the need for this Licensee and others to recognize and comply with these regulatory requirements for licensed premises. The Board adopts, and incorporates into this penalty decision, the findings from its decision on the infractions, including its findings of fact and findings of law, and mixed findings of fact and law.

[5] Ultimately, the Board finds that Route 19's licenses should be suspended for 16 days, with conditions added to the licenses. The suspension is to begin on a Thursday within 30 days of the Board's Order. The Board grants the Licensee's request to allow the suspension to be temporarily lifted for pre-scheduled events that Route 19 had committed to prior to the Board's decision on the appropriate penalty. The limited exemption applies to the Banquet Space only for the reasonable duration of the pre-scheduled events.

2.0 BACKGROUND

[6] AGFT referred a request for a disciplinary hearing, under Section 47B(1) of the *Liquor Control Act* RSNS 1989, c 260 (*Act*) to the Nova Scotia Utility and Review Board on June 14, 2024, alleging violations of Sections 61, 64(1), and 76 of the *Regulations* by Route 19 Brewing Inc. holder of Eating Establishment Liquor License No. 006536 and Lounge License No. 006537, for premises located at 16030 Central Avenue, in Inverness, Nova Scotia (licensed premises).

[7] The Board held the hearing on September 18-19, 2024. On April 1, 2025, on the coming into force of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board, maintaining the jurisdiction of the Board Member assigned to ongoing matters. That Board issued its decision on the merits of the disciplinary referral on May 20, 2025 [*The Liquor Control Act and Liquor Licensing Regulations (Re)*, 2025 NSRAB 27 (*Route 19 Discipline Referral*)]. For the reasons set out in that decision, the Board found that the Licensee had violated s. 64(1) of the *Regulations* by permitting activity on or about the licensed premises detrimental to the orderly control and operation of the licensed premises. The Board dismissed the alleged violations of s. 61 and s. 76 included in the infractions.

[8] With the agreement of counsel for the AGFT and the Licensee, the Board scheduled a teleconference on May 28, 2025, to determine a process to receive supplemental submissions on an appropriate remedy. Neither party opted to provide further evidence on the issue of penalty and agreed to submit their positions in writing rather than in a further oral hearing. The Board received written submissions from AGFT and the Licensee on the issue of penalty.

[9] Upon review of the Licensee's written submissions, the Board noted that several paragraphs under the heading "Post-Incident Efforts by the Licensee" included new information that the Board had not otherwise received in evidence. The Board asked for any comments or objections from AGFT, which were received on July 21, 2025. AGFT agreed that the Board's relaxed rules of evidence under s. 27 of the *Energy and Regulatory Boards Act* would permit the Board to accept the information as new unsworn

evidence. AGFT said those actions might be relevant to the issue of “due diligence” in any future disciplinary matters but were not relevant to the Board’s decision in this matter. AGFT said that in liquor disciplinary matters, the Licensee’s “post-violation conduct,” i.e., the new actions and policies the Licensee reported implementing, is not a mitigating factor on penalty.

3.0 ISSUE

[10] Subsection 64(1) of the *Regulations* imposes a duty on all holders of a liquor license to maintain the orderly control and operation of the licensed premises. It stipulates:

Activities not permitted in the Licensed Premises

64 (1) A licensee must not permit any activity in or about their licensed premises that is detrimental to the orderly control and operation of the licensed premises.

[11] The Board found that the Licensee violated that provision for the reasons set out in the *Route 19 Discipline Referral*. The only issue to be addressed here is to decide on a fair and appropriate penalty.

4.0 ANALYSIS AND FINDINGS

4.1 Regulatory Scheme

[12] The *Act* gives the Board the same powers as the Executive Director of AGFT to address a violation of the *Act* and *Regulations*. This matter came to the Board as a referral of a disciplinary action from the Executive Director under s. 47(3) of the *Act*. In this referral process, the Board has the jurisdiction to impose any remedy that would be available to the Board on an appeal of a disciplinary decision, as set out in s. 47E(2)

of the *Act*, i.e., in summary, to impose conditions on a license; rescind or amend conditions; suspend all or any part of a license; cancel all or any part of a license; and, order another remedy as the Board considers appropriate.

[13] Section 82B(5) of the *Regulations* indicates the Board's authority and broad discretion in "determining a disciplinary matter" referred by AGFT's Executive Director:

- (5) As set out in clauses 47E[1](a) to (e) and subsection 47E(3) of the Act, in determining a disciplinary matter, the Review Board may, subject to the Act, but otherwise in the Review Board's discretion, do any of the following:
- (a) impose conditions on a license;
 - (b) rescind or amend existing conditions on a license for any period of time that the Review Board considers appropriate;
 - (c) suspend all or any part of a license for any period of time that the Review Board considers appropriate;
 - (d) cancel all or any part of the license;
 - (e) order, in accordance with the Act and these regulations, another remedy that the Review Board considers appropriate.

[14] The penalty provisions do not provide any maximum or minimum penalty for a violation of the *Act* or *Regulations*, or indication of what factors to consider. However, the Board finds that the language of the provisions allows the Board to exercise a broad discretion, in accordance with the *Act* and *Regulations*, to impose the penalty it considers appropriate. In accordance with clause (e), it may order another remedy not specifically considered in the legislative scheme if the Board considers it appropriate.

[15] The Board has no authority to determine causation or liability from a criminal or civil liability perspective. However, in addressing penalty in liquor licensing and other matters, the Board has relied on the principles of criminal sentencing applied to the regulatory context, including: the seriousness of the offence, specific and general deterrence, denunciation, aggravating factors/conduct of the offenders, and prior

convictions. In *Economy Shoe Shop Café and Lounge (Re)*, 2002 NSUARB 13, the Board enunciated some of these principles in the context of liquor disciplinary matters:

[21] Another concern of the Board is that an appropriate and fair sanction be imposed on the Licensee. The Board is also guided by principles of general and specific deterrence, especially in the case of a repeat offence, which occurred just one year after the Board issued a decision respecting the first offence. The suspension must be sufficient to impart the seriousness of the matter on the Licensee, and other licensees, that such offences are serious and cannot be tolerated. [Emphasis added]

[16] While a Board panel is not bound by past decisions of the Board, the Board tends to rely on comparable past Board precedents in order to ensure consistency and predictability in the Board's decision-making. It is important that licensees under the same regulatory regime are treated the same way in the same circumstances.

[17] The Licensee's submissions, recognizing that the decisions arise from different regulatory schemes, recommend the Board consider the sentencing principles applicable to occupational health and safety cases summarized recently in *R. v Hoyeck*, 2020 NSPC 24, by Judge Buckle:

[33] In *N.S. Power and R. D. Longard Services Ltd.*, Derrick, P.C.J. (as she then was) described the legal framework and governing principles for sentencing OHS violations:

[...]

There are three primary objectives of sentencing for a violation of the applicable health and safety legislation. First, there is the deterrence aspect of the sentencing process, both specific to the convicted party and generally for the community. Secondly, there is the retribution aspect of the sentencing process, indicating the moral wrong and the need to reinforce the value or standard that was violated. Thirdly, there is the rehabilitation-reform aspect of the sentencing process for the convicted party to be convicted to be assisted in not repeating the offence.

[18] Judge Buckle's decision then addressed considerations in weighing the appropriate fine for occupational health and safety violations, as set out in *R. v Cotton Felts Ltd.* 1982 CanLII 3695 (ONCA). These include economic considerations about the size and finances of the company itself, which are relevant when determining a fine sufficient to be a "warning" with a deterrent effect, and not simply part of the cost of doing

business. These economic considerations are less relevant in this case where the recommended penalty is a suspension of the privilege of a license to engage in activity that would be prohibited *but for* the license, not the imposition of a fine. The principles from an occupational health and safety perspective are not directly applicable to the liquor licensing regime. However, these cases cited by the Licensee are helpful to reinforce the broad meaning of deterrence in the context of public welfare offences (intended to protect the physical, economic, and social welfare of the public), as “encompassing an emphasis on community denunciation and stigmatization of an act with the result being a moral or educative effect that conditions the attitude of the public” (*R. v Hoyeck*, para. 33, quoting *Cotton Felts*, para. 29).

4.2 Range of Outcomes

[19] It would be difficult, within the framework of the Board’s past decisions under this *Act*, to have a broader span of possible outcomes than those respectively proposed by the Licensee and AGFT. The Licensee recommends that the Board rely on s. 47E(e), which allows another appropriate remedy, and issue an order of reprimand with no suspension or other action on the license. AGFT argued for a lengthy suspension of 50 days.

[20] In its first submissions, AGFT initially sought a 60-day suspension based on all the violations (i.e., s. 64(1), s. 61 and s. 76) AGFT alleged to have occurred before Mr. Lewis was found critically injured at Route 19. AGFT said that this initial recommendation broke down the suspension to 50 days for the alleged violation of s. 64(1), and five days each for the other infractions under s. 61 (allowing an intoxicated person to remain on the premises) and s. 76 (employee consuming liquor in the premises while on duty).

Therefore, in its revised submissions on penalty, AGFT maintained its recommendation for a 50-day suspension for the proven violation of s. 64(1).

[21] AGFT explained that part of its rationale for giving substantially more weight to the violation of the Licensee's duty not to allow activity "detrimental to the orderly control and operation" of the licensed premises is:

5. ... permitting conduct detrimental to the orderly control and operation of the licensed premises was the "root cause" that resulted in additional infractions being issued by the AGFT to the Licensee under Regulations 61 and 76. [Emphasis in original]

[AGFT Penalty Submissions, para. 5]

[22] AGFT also relied on several Ontario cases to argue for a lengthier suspension period, which are discussed later in this section.

[23] In Nova Scotia, the penalty imposed on licensees in liquor licensing proceedings associated with a fatality has ranged from two days, in *3019339 Nova Scotia Ltd, (Re)*, 2001 NSUARB 74 (*Pirates Lure*), to the recent imposition of a 45-day suspension in *New Palace Cabaret Ltd. o/a Palace Cabaret (Re)*, 2024 NSUARB 181, which was based on an agreed statement of facts and joint recommendation for penalty. In *Royal Canadian Legion, Branch 28 (Re)* 2008 NSUARB 70; 2008 CanLII 30662 (Order), the Board found the Legion had contravened multiple sections of the *Regulations* related to overserving a patron in circumstances where the patron died after leaving the Legion. The Board ordered that the Legion's Club (Liquor) License be suspended for a period of one month, including suspension of video lottery terminals and adding a license condition that all management and staff take a Responsible Beverage Service Program course. The Board found that the circumstances of the case were "alarming" and merited a significant response. The Board said the penalty to be imposed should make clear that contravention of those sections in the *Regulations* will attract a severe penalty.

[24] Route 19 acknowledges the surrounding tragedy but pragmatically maintains that Mr. Lewis' death is not relevant for the purposes of a disciplinary matter before the Board. Rather, the Board should strictly constrain its review to the breach of s. 64(1) of the *Regulations*. The Licensee maintains that the overall circumstances weigh against a punitive approach, because the infraction was "situational and isolated" rather than indicative of systemic or repeated failure of compliance with the *Regulations*.

[25] AGFT provided the Board with a citation for apparently the longest liquor license suspension following a fatality and the violation of liquor laws in Ontario; a 90-day suspension imposed by the Ontario Liquor Appeals Tribunal in *Pan-Yen (Kelly) Chuang, & Adrien Joseph Yvon Vachon o/a Fat Cat's Pizza v Registrar under the Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*, 2020 CanLII 27437 (ONLAT). In that case, the Appeal Tribunal found that a bartender had overserved a patron they knew or ought to have known was intoxicated and failed to ensure the patron was returned safely home. In a second incident, the Licensee breached other provisions relating to the cessation of service and lying to a compliance officer about it. The regulator had argued that the subsequent death of the patron from ethanol toxicity (alcohol poisoning) should be an aggravating factor. The Alcohol and Gaming Commission of Ontario originally sought revocation of the license. The Tribunal found that revocation of the license was too harsh a penalty, noting the past conduct of the Licensee and steps they took to prevent reoccurrence of the breaches were mitigating factors on penalty. However, the decision imposed the suspension of 90 days:

[10] The evidence does satisfy me that a penalty is necessary to act as a deterrent to both the Appellants and to other license holders. I am directing the Registrar to suspend the license for 90 days, commencing from a date to be set by the Registrar.

[26] The Licensee's submissions outline the factual matrix that distinguishes *Pan-Yen*, including the history of non-compliant behaviour of the licensee in that case, the amount of alcohol served to a patron clearly exhibiting signs of a high level of intoxication (falling, imbalance, colliding with other patrons).

[27] AGFT's approach, in light of the Board's findings on the violations, was to reduce its recommendation for the overall penalty by removing the standard penalty for the unproven offences (i.e., from 60 days for three violations, to 50 days for the violation of s. 64(1)). AGFT's Book of Authorities includes an Ontario case: *2193145 Ontario Inc. o/a Boston Pizza v Registrar, Alcohol and Gaming*, 2016 ONSC 3552, where two out of three violations were proven, in a case where an intoxicated patron was knowingly supplied with alcohol when he was intoxicated and was later killed by a car in the parking lot. The Licence Appeal Tribunal noted there was a high level of alcohol service in quick succession, and staff of the licensee had an "awareness of his true condition" and knew he regularly drank to excess. The Licence Appeal Tribunal reduced the proposed 60-day suspension and ordered a 55-day suspension for the remaining two violations. That penalty was upheld by the Ontario Superior Court in the cited decision.

[28] In *168774 Ontario Inc. v Registrar of Alcohol and Gaming*, 2017 ONSC 3579 (*168774 Ontario Inc.*), the Ontario Superior Court upheld a 40-day license suspension where the licensee, on two occasions, sold alcohol to patrons who appeared intoxicated and were allowed to remain on the premises. In the first instance, the patron was found outside, having died from hypothermia. In the second incident, five days later, the server "cut off" another intoxicated patron but allowed him to walk home on foot. He

was found later having died from hypothermia. The second similar violation and failure to change the licensee's approach were considered aggravating factors.

[29] The Licensee argued that the Ontario cases are of little value given the different statutory scheme and context in Nova Scotia. Additionally, the Licensee noted that any of the cases of this Board based on a settlement agreement and joint recommendation on penalty are of limited value for comparison because they lack the information on the facts of the case. The Board agrees that the Ontario Liquor Licensing regime is based on a different statutory scheme and principles. The *Liquor Licence and Control Act*, 2019 SO, c 15 Sch 22, (*Ontario Act*) sets out that for most offences, a corporation may be liable for a fine of up to \$250,000 (s. 68(1)(a)), and an individual may be liable for a fine up to \$100,000 or imprisonment of up to one year, or both (s. 68(1)(b)). The comparable provisions in the *Act* authorize penalties of up to \$10,000 and six months' imprisonment. The available license penalties in Ontario include a refusal to renew, suspension, or revocation of a license for contravention of the *Ontario Act*, its regulations, or any standards or conditions applicable to a license, similar to the Nova Scotia *Act*. However, the *Ontario Act* also explicitly sets out rules regarding liability findings in cases where a person is "overserved" to the extent that their intoxication would create a danger of causing injury to themselves or others (see s. 52). These additional rules and remedies do not exist in this province's statute.

[30] The Ontario Superior Court, in *168774 Ontario Inc.*, stipulated that the *Ontario Act* and regulations "give the Tribunal wide discretion with respect to the sanctions it may impose" (para. 18). The Court noted the Tribunal considered such factors as "the seriousness of the infractions, the seriousness of the consequences, that no

change or remedial steps were undertaken between the two instances giving rise to the infractions, and the principles of specific and general deterrence” (para 19a.). Further, the Tribunal considered, as mitigating factors, that these were the first administrative actions taken against that licensee, and the server had taken steps to stop serving the patron and offered to drive him home. The Court upheld the 40-day suspension, finding no error of law.

[31] The Licensee reviewed recent decisions of the Board and its predecessor, where at least one charge specifically involved a violation of s. 64(1) of the *Regulations*, the same provision at issue in this matter. In *Tusu Karaoke Incorporated (Re)*, 2024 NSUARB 119, the Board approved a 14-day suspension for multiple violations of several sections of the *Act* and *Regulations*, including s. 64(1), based on an Agreed Statement of Facts and settlement proposal filed by the Licensee and AGFT. In *Alimentary Services Limited (Re)*, 2009 NSUARB 42, upheld in 2009 NSCA 97, the Licensee was charged with numerous infractions, but the Board found that the Licensee had contravened s. 64(1) of the *Regulations* and dismissed the other violations. The Board determined that the violation, based on evidence of overcrowding, congestion of entrances and exits, and other problematic behaviour by patrons, had compromised the safety of the premises and hindered the licensee’s ability to control and manage the service and consumption of liquor. The Board imposed a two-day suspension in that case.

[32] From the span of penalties put before the Board, all are somehow distinguishable once you compare the factual matrices in those cases against the circumstances at Route 19. In addition, because of the differences in the legislative schemes the Board finds the range of sentencing cited by AGFT in the Ontario cases to

be less compelling than the Board's prior cases in approximating the range of fair and comparable penalties applicable to this case.

4.3 Seriousness of the Offence

[33] The decision on the infractions canvassed the elements, leading the Board to conclude that the Licensee violated s. 64(1). The Board considers this offence and the circumstances surrounding it to be serious. There was not a single, minor incident or activity leading to this violation of s. 64(1), rather, this charge arose from a worrying culmination of failures to prevent activity "detrimental to the orderly control and operation of the licensed premises" over the course of an evening.

[34] In its decision, the Board found the Licensee failed to draw a clear line between allowable behaviour for on-duty and off-duty employees. Allowing a person, including an off-duty employee, access to closed areas of the establishment when that person has been drinking alcohol shows a lack of control. The Board found that, after he was off duty and had consumed alcohol, Mr. Lewis should not have been permitted to repair equipment, serve himself and others alcohol from behind the bar, or enter the closed brewery and upper floors of the licensed premises. The Board said the Licensee must empower their managers and bartenders to enforce the rules, no matter who the patrons are. The Board also found on the evidence that Mr. Lewis was likely intoxicated in the licensed premises later in the evening of July 13, however, the evidence did not demonstrate, on a balance of probabilities, that staff knew, or must reasonably have known, that Mr. Lewis was intoxicated. Nevertheless, by the end of the evening, Mr. Lewis had a high blood alcohol concentration that, as testified by Dr. Jake A. Yorke, Medical Examiner, put him at greater risk of accidental death. Without adequate control over the

activities in the eating establishment, Mr. Lewis was able to come and go to areas beyond the supervision of the lounge staff and where he had unsupervised access to liquor and other safety risks.

[35] Although Route 19 is primarily an eating establishment, it operates in conjunction with a liquor manufacturing facility, the Brewery, which was largely unsupervised after working hours. In the Board's view, monitoring and strictly controlling access to that area and other closed sections is essential to ensure the safety of customers and staff, and to ensure that access to liquor is controlled according to the *Regulations*. The underlying purpose of the legislative scheme is to control the sale and service of liquor. The Board agrees with AGFT that the orderly control and operation of the premises is a principal protection intended to ensure the safety of a licensed establishment.

4.4 Conduct of the Licensee

[36] The Licensee argues that despite the Board's finding that it violated its positive obligation to maintain the orderly control and operation of the licensed premises, its contravention of that duty was not deliberate. Route 19's common clientele is not a "party type crowd". Rather, it caters to "families that come in for meals", tourists and golfers.

[37] The Board questioned AGFT Acting Director, Investigation and Enforcement, Andrew J. MacLean on what elements compliance officers would look for in assessing a possible violation of s. 64(1) of the *Regulations*. My comments during that exchange acknowledge that the video surveillance footage did not show "an out-of-control

situation". Rather, most people were seated at tables and the atmosphere seemed relatively calm. As explained in the decision on the merits at paragraph 107:

[107] ... However, maintaining order and control for the safety of the public on and about the premises is of utmost importance in this legislative scheme. It is undisputed that over consumption of liquor can be intoxicating and therefore, hazardous. While s. 64(1) relates to the control and operation of the premises, the provision is, in effect, dealing with the safety of the public, as well as patrons and staff.

[Route 19 Merits Decision, 2025 NSRAB 27]

[38] The Board's decision outlines the Licensee's conduct on the evening of July 13, 2023, that reflected a lack of recognition of the inherent hazards of consumption of liquor as well as the control of access to the Brewery area beyond that was required for its lawful function and operation. Further, Route 19 failed to ensure that the *Regulations* and policies in place to ensure the safe and legal operation of Route 19 were enforced with everyone, including other staff and owners.

[39] The parties agree, however, that the infractions issued against the Licensee under the *Act* and *Regulations* are the first infractions issued. No criminal charges were laid respecting the incidents in relation to this case, despite police involvement. This Licensee does not have a proven history of repeated or recurring violations.

[40] The Licensee argues that its history of compliance and the absence of any escalating or deliberate disregard for the *Regulations* weighs against a punitive penalty. Counsel for the Licensee also notes that the conduct of the Licensee in failing to meet its duty to prevent activities detrimental to the orderly conduct and operation of the licensed premises was not deliberate.

[41] The Licensee had policies in place which, along with the *Regulations*, were intended to maintain order in the premises and ensure compliance with its license requirements. However, these policies were not followed in all circumstances on the

evening of the incident. As noted in the Board's decision, there was a level of casualness in the Licensee's on-duty employees dealing with Mr. Lewis as Brewmaster, Wayne Gillis as owner, and his guests. At the time, staff did not enforce any policy disallowing the Brewmaster from accessing the Brewery after he was off duty, or after consuming liquor outside of tasting and quality control responsibilities. It did not enforce its policy of assigning a server to all tables and tracking sales of alcohol in the point-of-sale system.

[42] Unlike *Criminal Code* offences, which have a fault or moral blameworthiness element, offences under the *Act* are regulatory, or "public welfare" offences. These are strict liability offences, and a finding of "fault" is not required.

[43] AGFT's final submissions reiterate the evidence that it says demonstrated that the Licensee knew or should have known that Mr. Lewis consumed alcohol while at Route 19, either while working or as a patron. It says the Licensee was reckless or willfully blind to a history of alcohol use. While the Board found that Mr. Lewis was intoxicated while at the licensed premises, it found that the Licensee had satisfied the burden to defend the alleged s. 61 infraction in this case. It was not convinced on a balance of probabilities that the Licensee knew or ought reasonably to have known that Mr. Lewis had a history of becoming intoxicated at Route 19. These findings have been made, and the Board will not elaborate further on them. The Board finds that this case differs from *Royal Canadian Legion, Branch 28*. in that regard.

[44] The Board notes the Licensee's submissions indicate that it has taken steps to enhance security measures between the lounge area and the Brewery. It refers to these in the submissions as "significant and meaningful post-incident efforts to ensure regulatory compliance within the Licensed Premises". These are summarized in the

Licensee's Submissions on Penalty at pp. 15-16, and include: the installation of a "swipe card" system of access control to the Brewery; logs of a record of entries and exits; an after-hours working policy, strictly prohibiting staff from entering the Brewery after the Brewmaster has left for the day, except as required to service the bar kegs; reassessing the Brewmaster job duties; additional video surveillance cameras in the Brewery; and a new policy ensuring all food and beverages for any patron must be entered into the point-of-sale system and paid in full.

[45] AGFT says that these measures are irrelevant to the Board's consideration of what penalty should be imposed. There was no evidence or testimony presented on these measures during the hearing process. AGFT says that because this is a first offence, the offence should be judged on the circumstances at the time of the violation and is not mitigated by post-offence behaviour. While these improvements may be considered evidence of the Licensee's due diligence in the case of any future infraction, AGFT says they are not relevant to the current penalty decision.

[46] The Board generally agrees with AGFT's position that the starting place for penalty is what is fair and appropriate based on the offence. However, the Board acknowledges the Licensee's submission indicates that, at a minimum, it intends to take active steps to prevent activities that the Board found to violate the *Regulations*. It has taken a measure of responsibility, in particular, for the lack of control over access to the Brewery and for not assigning a server and formally tracking liquor sales and consumption at the table occupied by Route 19's owner and employees. The Board has not considered these additional steps as mitigating factors but finds they support the Licensee's purported willingness to address the weaknesses in its past policies and processes. In

other circumstances, where a licensee does not demonstrate the same recognition of its failure to meet the expected standard, there might be cause for additional punitive measures to reinforce the seriousness of the offence.

4.5 Deterrence

[47] In addition to considering the severity of the offences and whether a licensee has committed prior violations, the Board in *Economy Shoe Shop Café and Lounge*, cited earlier, indicated that the Board is guided by principles of general and specific deterrence, to impart the seriousness of a matter on the Licensee as well as others.

[48] The Board notes, as it did in *Pirates Lure* and *Royal Canadian Legion, Branch 28*, that it does not assess blame or culpability in a criminal or civil context, or make any findings on whether the Licensee's actions contributed to the circumstances resulting in Mr. Lewis' untimely death. However, the Board has considerable concern that the Licensee failed to recognize and live up to an important component of its duty to ensure the safety of its patrons and staff under this regulatory scheme. Mr. Lewis, while not on duty, was allowed to move about the licensed premises and into areas outside the supervision and control of staff after he had consumed alcohol. This entry into the Brewery area created a risk of unsupervised access to more alcohol and to areas that were not under the control of responsible staff of the licensed premises.

[49] The Licensee points out that it was in a unique situation because its manufacturing facility is located within the same building as the licensed premises, creating two separate workplaces. At paragraph 31-32 of its submissions, the Licensee argues:

31. Both the Lounge/Bar area and the Brewery are situated in the same building and are not in separate locations. If the Brewery had been located elsewhere, such as down the street or in a remote location, there would have been no movement by Mr. Lewis in and out of the Brewery throughout the evening. The Licensee argues that the location and layout should be taken into account when evaluating the context of the violation.

32. Certainly, the fact that the Lounge/Bar and the Brewery are located within the same physical space, requires a different approach to management and oversight.

[50] The Board agrees with the Licensee's point that, because the restaurant/lounge and Brewery are located at the same premises, a different approach to management and oversight was, and is, required. The co-location creates a different safety risk because of the availability of other alcohol in an area not directly supervised by staff with responsibilities for liquor sales and service under the *Act* and *Regulations*. The Licensee's responsibilities in this case are different, and in some ways more onerous than a licensee operating only a lounge or eating establishment under the *Regulations*.

[51] Other licensed premises may not share their space with a manufacturing facility but a key aspect of the orderly control of any licensed premises is ensuring that customers who are consuming alcohol on site remain under the supervision of trained staff who are monitoring their consumption of and access to liquor. As the Board said in *Royal Canadian Legion, Branch 28* at paragraph 64:

[64] ... Concomitant with the privilege of holding a license are certain responsibilities and prohibitions on the part of a licensee – to ensure compliance with the *Act* and *Regulations* and to ensure that proper control is always exercised over the operation of the premises.

[65] The Board considers that the penalty to be imposed should make clear the contravention of *Regulations* 14(d), 14(e), 15(i) and 15(j) will attract a severe penalty. The circumstances surrounding the violation of these *Regulations* is alarming and merits a significant response on the part of the Board.

[52] The Board finds there is a benefit to imposing a greater penalty in this case to focus other licensees' attention on their positive obligation to disallow activities detrimental to the orderly control and operation of licensed premises, whether a specific

activity is explicitly prohibited by the *Regulations*, or not. This requires good judgment, action, and possibly uncomfortable interactions for staff or managers with patrons or other employees.

[53] The Board finds that a reprimand, as recommended by the Licensee, or a short suspension of two days, as the Board has imposed in the past for single violations, would be insufficient to convey the gravity of the Board's concern about the activities that the Licensee permitted to occur in this case. This violation was not based on a single incident but a series of actions and omissions over the course of the evening that culminated with Mr. Lewis being unaccounted for over an extended period of time, during which he apparently climbed to the roof, fell, and was fatally injured. His whereabouts were generally unknown as he entered the Brewery approximately 13 times consuming alcohol, and he was seen behind the bar and serving alcohol when he was not working. Based on the Board's past precedents, any of these individual incidents would warrant a suspension at the lower end of the range.

[54] The Board accepts the Licensee's position that losing Mr. Lewis in these circumstances has motivated it to make changes. The Board believes that suspension of Route 19's licenses would serve the purpose of general deterrence for other licensees and impart the seriousness of this violation of s. 64(1) of the *Regulations*. Additionally, the Board believes that the imposition of license conditions that formalize measures to ensure proper control of these co-located premises would satisfy the goal of specific deterrence for the Licensee to avoid future violations or a laissez-faire approach to ongoing compliance.

[55] Although the Licensee has obligations for the orderly control and safety of both the service and manufacturing areas of the premises, the Board considers that maintaining a policy to ensure adequate separation and safe access to the Brewery facility for employees and patrons of the licensed lounge and eating establishment is a positive and necessary measure in these circumstances. The policy should be a condition of Route 19's licenses and include, at minimum:

- guidelines for after-hours and working hours access to the Brewery;
- maintenance of a working access control system;
- working surveillance cameras showing entry and exit access points between the eating establishment / lounge and the Brewery, including the roof access to the external Brewery equipment; and
- establishing training for employees on the guidelines and access control requirements.

4.6 Extenuating Circumstances

[56] What cannot be lost in the voluminous evidence and legal argument is that the outcome of the incidents at Route 19 on July 13, 2023, leading to the infractions issued by AGFT, was the tragic death of Dallas Lewis. The untimely death of a vibrant, beloved member of a small community would cause much heartache and upset under any circumstances. That this death occurred in Mr. Lewis' workplace, a licensed restaurant-lounge and brewery under multiple layers of statutory regulation, has added significant complications and complexity.

[57] AGFT argues that the Board should consider Mr. Lewis' death as an aggravating factor on penalty. AGFT's written submissions summarize Dr. Yorke

describing the findings in the toxicological testing [Exhibit R-5], that Mr. Lewis' blood alcohol concentration at the time it was tested after his death was 276 mg/dl (or .276 g/100ml). He verified, based on his knowledge, that this is between three to four times the legal limit of blood alcohol concentration to drive a motor vehicle of 0.08 g per 100ml. Dr. Yorke indicated that, in general, people with a higher blood ethanol (alcohol) concentration "are at a higher risk of accidental traumatic death" (Transcript, p. 23; quoted in AGFT submissions on penalty, para. 26). AGFT also highlighted excerpts from testimony addressing Mr. Lewis' use of alcohol on the night of his death, and the testimony of Inspector Meisner, Teagan Stewart, Wayne Gillis and Erinn Lewis about past incidents where Mr. Lewis was suspected to have consumed alcohol and exhibited signs of impairment after working at Route 19. AGFT says this is evidence of staff's "prior knowledge" or "willful blindness" to what its submissions describe as problem drinking and Mr. Lewis' past, unaddressed, overconsumption at Route 19.

[58] The Board addressed its findings on the issue of whether the Licensee proved the defence of due diligence and found that the Licensee had a reasonable, but mistaken belief of fact regarding Mr. Lewis' state of intoxication on the night of his accident. The Board made no finding of willful blindness or recklessness by the Licensee on his state of intoxication when he was in an area where staff could observe him.

[59] The Board, in *Pirates Lure*, references the decision of the former Liquor License Board in *L.W.F Firemen's Association Club (L.W.F.)*, July 31, 1998, where the Board made a distinction between the charge at issue, in that case, a breach of the regulation about serving an intoxicated person, and a related fatal accident:

The Authority believes it is extremely important to establish a penalty in this instance that is appropriate and fair. It is important to note that it is not the function of the Authority to assign blame or culpability in a civil or criminal context. It is not for the Authority to

determine whether any of the actions of any of the people in the Club that night contributed to Ms. Lavalette's death, or to determine the cause of the accident. There are other, more appropriate forums, for those issues to be raised and decided. The Authority, despite the tragic circumstances resulting in loss of life, is essentially left to determine an appropriate penalty for the first-time over service offence.

In the Authority's view, under the present circumstances, the fatality cannot be considered as a factor in imposing a penalty. To do so would have the effect of assessing blame for the accident on the Club. It has already been demonstrated that such a determination is not within the jurisdiction of the Authority. While there is a natural inclination for the public to look at the appropriateness of the penalty in the context of the fatal accident, the Authority cannot engage in such a balancing act. Even if the Club or any of its employees were found to be liable, in part, for this accident, the penalty for contributing to a fatal accident is not a suspension of liquor licensing privileges.

The established penalty for a first time violation of Regulation 14 (d) and/or (e) is in the range of one to three days, usually from a Thursday to Saturday inclusive. The Authority believes that despite the tragic outcome of the events of May 15, 1996, it would be unsupportable for the Authority to impose a penalty beyond the established range.

[60] In *Pirates Lure, supra*, the Board found the circumstances in that case similar to those in *L.W.F* and warranted a similar penalty. In both cases, the licensee was charged with violating the "over service" regulations, and the Board found, in both cases, that the evidence demonstrated that a patron was intoxicated in the licensed premises and was later found deceased in an accident. Despite the fatality, the Board found there was no compelling evidence to justify a longer period of suspension for the reasons articulated in *L.W.F*. The Board in both cases imposed a penalty of a two-day suspension (Friday and Saturday) of licensing privileges, on the basis that the established penalty for a first-time violation of the regulation at issue was in the range of one to three days.

[61] In the latter case of *Royal Canadian Legion, Branch 28*, discussed earlier, bar staff were aware that an intoxicated patron fell from his chair at the Legion and sustained injuries. He had a pattern of similar behaviour. While he was unconscious, staff placed him in his vehicle to "sleep it off". The patron was later taken to the hospital where he died. The Board found that the Legion had violated s. 14(d), 14(e), 15(i) and 15(j) of the former *Liquor Licensing Regulations*. The Board found that the patron was well known

to management and staff, and they were aware of the amount of liquor consumed by him before arriving and while at the Legion. Imposing the penalty, the Board stated the following:

The Board considers that the penalty to be imposed should make clear the contravention of *Regulations* 14 (d), 14 (e), 15 (i) and 15 (j) will attract a severe penalty. The circumstances surrounding the violation of these *Regulations* is alarming and merits a significant response on the part of the Board. While the President instituted some new policy directives, in response to the events of October 2006, these were introduced some 15 months after the unfortunate event of October 13, 2006.

[62] The Board agreed with the recommendation of the (then) Alcohol and Gaming Division (AGD) and imposed a one-month suspension. The Board's comments on the issue are limited, but AGFT argues, and the Board agrees, that the Board did consider the circumstances surrounding the violation, describing them as "alarming" and meriting "a significant response on the part of the Board". Nevertheless, the Board does not directly tie the increase in penalty to the patron's death. Rather, the Board's comments focus on the deterrent effect of a significant penalty for overserving a patron in the licensed premises.

[63] In *New Palace Cabaret*, the Board accepted a joint recommendation for a penalty of 45-days and conditions on the license to update the video surveillance system. The only factual findings included in the joint settlement agreement are an acknowledgement by the licensee that it violated s. 64(1) of the *Regulations* on four occasions, and s. 73 on one occasion. The Board referred to the factors to be considered on penalty as follows:

In addition to considering the severity of the offences and whether a licensee has committed prior violations, other factors to be considered on whether a penalty is appropriate for violating the Liquor Licensing Regulations were outlined by the Board in *Economy Shoe Shop Café and Lounge*, 2002 NSUARB 13:

[21] Another concern of the Board is that an appropriate and fair sanction be imposed on the Licensee. The Board is also guided by principles of general and specific deterrence, ... The suspension must be

sufficient to impart the seriousness of this matter upon the Licensee, and other licensees, that such offences are serious and cannot be tolerated.

After reviewing the submissions, the Board concluded that the terms of the joint recommendation outlined in the Settlement Agreement are reasonable and appropriate in the circumstances. The Board accepted the joint recommendation and rendered its oral decision on the same date, with the Order to follow.

[64] The Board recognizes that no penalty will ever reflect the gravity of the loss of Mr. Lewis for everyone who knew and cared about him. Rather than assessing a related fatal accident as an aggravating factor that automatically increases the maximum in the range of penalties the Board may impose, the Board's view is that any serious outcome be assessed as part of the totality of the circumstances surrounding the offence. The Board's assessment, as in all cases, must review all of the circumstances to decide on an appropriate and fair sanction.

[65] The Board distinguishes certain factors of the *Royal Canadian Legion, Branch 28*, case from this one. In particular, the Board's findings that the licensee knowingly allowed a patron with a known history of overconsumption to become highly intoxicated to the point of falling in view of staff. Additionally, staff moved the injured and unconscious patron to his vehicle, alone. Nevertheless, as discussed earlier, the circumstances around this violation are troubling and warrant a penalty sufficient to impart a strong message of deterrence.

4.7 Other Considerations on Penalty

[66] The Licensee did not offer evidence of the potential financial implications a suspension would have on its business operations. However, Counsel's submissions asked the Board to consider Route 19's pre-scheduled commitments if the Board decided to impose a penalty beyond an order of a reprimand. In particular, the Licensee indicated that it had existing contracts for events booked by third parties within its Banquet Hall,

which is located on the upper level of Route 19. The Licensee submitted at paras. 103-104:

103. Events such as weddings and private functions often involve substantial personal and financial commitments made well in advance. Many of these clients are unaware of any pending regulatory issues and have entered into good-faith agreements with the Licensee. To impose a penalty without regard to these circumstances would risk causing disproportionate and avoidable disruption to those third parties.

104. The Licensee notes a Nova Scotia regulatory practice: it is common for the AGFT to structure suspensions in liquor licensing privileges so that they are served on the same day as when the infraction took place. Accordingly, the Licensee respectfully submits that if a penalty is ordered by the Board, it should apply only to the area in which the violation occurred, i.e. the downstairs Lounge/Bar area and Brewery. It should not extend to the Banquet Hall, especially where pre-scheduled events would be affected. Exceptions would be granted for any bookings made prior to the penalty imposition.

[67] In other cases, the Board has considered the circumstances of an individual licensee in determining an appropriate penalty. In *Alcohol and Gaming Division (Re)*, 2010 NSUARB 107 (*Toothy Moose*), the Board considered a request from (then) AGD to impose a five-day suspension and add a condition for an earlier closing time on a cabaret license for one year. The Board considered the impact the earlier closing may have on the survival of the business, commenting that it may effectively suspend and/or cancel the cabaret license. The Board found that the five-day suspension, already imposed, was adequate for the multiple violations of the *Regulations* (including s. 64(1)).

[68] In *Economy Shoe Shop Café and Lounge*, the Board decided that it would not consider the licensee's financial situation and potential hardship when determining the penalty for a violation of the *Regulations*. That licensee argued that the proposed suspension of three days would cause a potentially fatal financial toll on the business and hurt its employees. The Board found that the circumstances weighed in favour of increasing the penalty. However, it structured the penalty to cause the least impact on kitchen staff that were not party to the liquor violation.

[69] In the recent decision of *Grafton Street Restaurant Limited (Re)*, 2025 NSUARB 19, the Board disagreed with a narrow interpretation of the *Economy Shoe Shop Café and Lounge* decision. It said that, although the statutory scheme is silent on the factors the Board may take into consideration to determine the terms of a license suspension, the Board has broad discretion when deciding the penalty. The Board agrees and reiterates that, subject to the *Act*, it can broadly consider all circumstances when determining a penalty.

[70] As stated earlier, the purpose of the Board's penalty in the present case is primarily deterrence and imparting the seriousness of the offence. The Board has the option to cancel a license if it were to find that the appropriate sanction is for a licensee to lose the privilege of its liquor license. That penalty clearly would have significant business and economic impacts. However, in these circumstances, the Board finds that imposing a suspension of a significant length is appropriate based on the range of past penalties and the seriousness of this offence. There will inevitably be impacts on the Licensee's business for the course of the suspension. These are part of the intended deterrent and penal features of the penalty provisions of the *Act*. Nevertheless, the Board accepts the Licensee's argument that imposing a penalty with real implications on the Licensee's ability to meet contractual obligations, that also disrupts the events arranged in good faith by third parties that may also rely, in part, on the operation of the license, is unduly burdensome in this case.

[71] Past Board panels have used creative sentencing such as imposing suspensions for consecutive weekends. A fair and appropriate penalty can be achieved without the suspension being imposed for strictly consecutive days throughout the facility.

The Board finds the Licensee's proposal to allow the license suspensions to be lifted for the Banquet Space on dates when the Licensee has a pre-existing contractual booking arrangement, subject to conditions, to be reasonable.

5.0 CONCLUSION

[72] The Board finds a suspension of more than one month is outside of the range of comparable sentences for a first violation of the single provision of s. 64 of the *Regulations*. However, the common two-day suspension imposed in the past for such a violation would be insufficient in this case to meet the regulatory sentencing objectives of accountability and future deterrence. The circumstances of this violation were extremely serious, and the Board finds that, in multiple ways, the Licensee failed to recognize its obligations to maintain the same supervision and control over staff and associates as it would over visiting members of the public. It is important to send a clear message to the Licensee and the whole industry that diligence in ensuring the orderly control and operation of the premises applies to a brewpub as much as it applies to a busy dance bar. The co-location of a Brewery leads to special considerations. Licensees must not treat their regulatory obligations casually in any circumstances.

[73] After reviewing the evidence and the submissions of the parties on penalty, the nature of the violations, and the need for this Licensee and other licensees to recognize their crucial role in ensuring the safe sale and service of liquor in the province in accordance with the *Act* and *Regulations*, the Board finds that the appropriate penalty in this matter is a suspension of Route 19's liquor licensing privileges for a period of 16 days. The Board arrived at this conclusion by considering each incident where the

Licensee allowed activity detrimental to the orderly control and operation of the Licensed Premises and weighing the sentencing factors against the individual incidents and the cumulative circumstances, based on the Board's findings of fact. In consideration of the timing of this decision and given the Board's acceptance of the Licensee's proposal for a temporary exemption from the suspension for the Banquet Space area for pre-booked events committed prior to the release of this decision, the suspension is subject to the following conditions:

1. Eating Establishment Liquor License No.006536 and Lounge License No. 006537 are suspended for a period of 16 days, commencing on a date within 30 days of this decision as recommended by AGFT after consultation with the Licensee.
2. The suspension must begin on a Thursday and must be served on days when the licensed premises would normally operate.
3. Following consultation with the Licensee, AGFT must file a written recommendation as to the dates on which the suspension should be in effect. The Board will consider the recommendation and issue an Order confirming the effective dates of the suspension of the licenses.
4. The Board will grant a temporary exemption to the suspension where the Licensee can demonstrate that an existing commitment for an event in the Banquet Space was pre-scheduled prior to the date of this decision.
5. Where the Licensee has demonstrated a commitment to a pre-scheduled event(s), the suspension exemptions are subject to the following terms:

- a. the Licensee must provide AGFT with all dates of its pre-scheduled events planned for the Banquet Space to accompany AGFT's recommendation to the Board for the suspension dates;
 - b. the exemption will only apply to an event pre-scheduled under a verifiable agreement concluded prior to the date of this decision;
 - c. the exemption applies to the use of the Banquet Space, for the time specified in the agreement for the event and does not apply to the other areas of the eating establishment/lounge; and
 - d. where no time is specified, the exemption applies for such reasonable time as required for the event, subject to the normal terms of the applicable license.
6. In accordance with ss. 83(1) and (2) of the *Regulations*, a Suspension Notice must be posted by, or at the direction of an AGFT Inspector, at the licensed premises stating that the liquor licenses have been suspended. The Notice of Suspension is to be removed by, or at the direction of an AGFT Inspector, at the conclusion of the suspension period.
7. This suspension does not prevent the business from providing the sale of food or other non-liquor-related services in the Licensed Premises, including activities permitted under the Brewery Permit that are not subject to the Board's jurisdiction.
8. The following conditions are added to Eating Establishment Liquor License No.006536 and Lounge License No. 006537:

The Licensee shall establish and implement a policy, to the satisfaction of the Executive Director, respecting access to the Brewery to and from the eating establishment / lounge area (including the Banquet Space), including:

- guidelines for working- and after-hours access to the Brewery by employees and patrons of the licensed premises;
- maintenance of a working access control system at internal access points between the eating establishment/lounge and the Brewery, including roof access for the external Brewery equipment;
- maintenance of video surveillance equipment showing internal access points between the eating establishment / lounge and the Brewery, including roof access for the external Brewery equipment;
- requirements for training for employees of the Licensee on the guidelines and access control requirements.

[74] If there is any disagreement on the start date for the suspension, the dates and times of the suspension exemptions for the Banquet Space, or the policy terms, the parties may seek the Board's direction.

[75] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 23rd day of October 2025.



Julia E. Clark